

Exhibit 42

ORIGINAL

1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MIYANO MACHINERY USA INC.,
Plaintiff,

-VS-

No. 08 C 526

MIYANOHITEC MACHINERY, INC.,
THOMAS ("TOM") MIYANO, a/k/a
TOSHIHARU MIYANO and STEVEN
MIYANO, a/k/a SHIGEMORI MIYANO,

Defendants.

MIYANOHITEC MACHINERY, INC.,
THOMAS ("TOM") MIYANO, a/k/a
TOSHIHARU MIYANO and STEVEN
MIYANO, a/k/a SHIGEMORI MIYANO,

Counterclaim-Plaintiffs,

-VS-

MIYANO MACHINERY USA INC.,
Counterclaim-Defendant,

and

MIYANO MACHINERY, INC.,

Third-Party Defendant.

- CONFIDENTIAL - ATTORNEYS' EYES ONLY -

The deposition of THOMAS TOSHIHARU MIYANO, called by the Plaintiff for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pursuant to the taking of depositions, taken before Barbara A. Wichmann, C.S.R., a Notary Public within and for the County of Cook, State of Illinois, at Suite 2850, 200 West Adams Street, Chicago, Illinois, on Wednesday, April 23, 2008, at the hour of 10:06 a.m.

1 **APPEARANCES:**

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3 **LTD.**

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6 **Mr. Jason R. Smalley**
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10 **- and -**

11 **MASUDA, FUNAI, EIFERT & MITCHELL, LTD.**

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17 **on behalf of Miyano Machinery USA and**
18 **Miyano Machinery, Inc.;**

19 **DOWELL BAKER**

20 **BY: Mr. Geoffrey A. Baker**
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24 **- and -**

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on behalf of the Defendants and
Counterclaim Plaintiffs.

ALSO PRESENT:

Mr. Shigemori Miyano
Mr. Robert Zellner, Videographer,
Depovision

- - - - -

I N D E X

WITNESS PAGE

TOSHIHARU MIYANO

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 E X H I B I T S
 (Exhibits are attached.)

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- - - - -

1 A. My study was mechanical engineering.

2 Q. At what university?

3 A. Nihon University.

4 Q. N-i-h-o-n?

5 A. N-i-h-o-n.

6 Q. Where is that?

7 A. Chiba Prefecture.

8 Q. Did you get a degree?

9 A. Yes, sir.

10 Q. What's the name of the degree?

11 A. Bachelor of engineering.

12 Q. Do you have any further degrees, more
13 degrees?

14 A. No, sir.

15 Q. When did you get the bachelor of engineering
16 degree?

17 A. 1972.

18 Q. Was Toshimori Miyano the founder of Miyano
19 Machinery, Inc.?

20 A. No, sir.

21 Q. Who was the founder of that company?

22 A. This company was -- this organization was
23 found by Hajime Kakuta.

24 Q. Would you spell that, please.

1 A. Hajimue is H- -- H-a-j-i-m-u-e.

2 Kakuta, K-a-k-u-t-a.

3 Q. Is -- and when was that?

4 A. 1888.

5 Q. Is that a man or a woman?

6 A. Man.

7 Q. Was Hajimue Kakuta an ancestor of yours?

8 A. Excuse me?

9 Q. Was he a relative of yours?

10 A. He was stepfather to Toshimori Miyano.

11 Q. Did Toshimori Miyano have any brothers or
12 sisters?

13 A. No.

14 Q. Do you have any brothers or sisters?

15 A. Yes, sir.

16 Q. Who are they?

17 A. My sister.

18 Q. No one else?

19 A. No, sir.

20 Q. What is the name of your sister?

21 A. Toshiko Tsunashima.

22 Q. Can you spell that, please.

23 A. Toshiko is T-o-s-h-i-k-o.

24 Tsunashima is T-s-u-n-a-s-h-i-m-a.

1 Q. Thank you.

2 Did Hajimue Kakuta run the company that he
3 began in 1888?

4 A. I heard from this story by my mother.

5 Q. What did she say about this?

6 A. Oh, she said that Toshimuri Miyano's father
7 get his son Toshi- -- Toshimori Miyano's father name
8 is Moriichi Miyano.

9 Moriichi is M-o-r-i-c-h-i -- oh. Sorry.

10 M-o-r-i-i-c-h-i, Miyano, M-i-y-a-n-o.

11 Moriichi Miyano get his son April of -- I
12 don't know the year now. And this his -- my father's
13 father pass away August this year. This same year.

14 So the -- my grandmom became a widow.

15 So she marry this guy, Hajimue Kakuta. I
16 don't know when she married. And Hajimue Kakuta had
17 no children. And Hajimue Kakuta and this grand- --
18 my mom, had no children. So then my father,
19 Toshimuri Miyano -- let's say Toshimuri Miyano
20 getting ten years old or eleven years old, this
21 Hajimue Kakuta dead.

22 Then my grandmom -- her name was -- I
23 forget. But her last name I memory -- Sonobe,
24 S-o- -- S-o-n-o-b-e, Sonobe, take care about this

1 company.

2 Q. Sonobe ran the company?

3 A. Yes, Mrs. -- Sonobe ran the company.

4 Q. Your grandmother?

5 A. My grandmom, until my father, Toshimuri
6 Miyano, was graduate in university, when I think he
7 was 21 or 22 years old.

8 Q. And then what?

9 A. And that graduation day, he become president
10 of this company, and he change this company name to
11 Miyano, few -- few -- few -- few -- I don't know how
12 to say -- file, like this is metal, like scratches
13 the metal -- file?

14 Q. File.

15 A. File Manufacture Corporation from the old
16 name.

17 Q. What was the old name?

18 A. I don't know.

19 Q. Okay. And the business of Miyano File
20 Manufacture Corporation was what?

21 A. To make file.

22 Q. For machine -- for metal?

23 A. No. We call like jewelry.

24 Q. Jewelry?

1 A. Yeah, jewelry like necklace, or like small
2 item.

3 Q. Okay. And how many years did your father
4 run the corporation?

5 A. My father was pass away, dead, when I was
6 sixteen years old.

7 Q. And then your mother ran the company?

8 A. No. No. Three -- three president.

9 Q. Do you remember their names?

10 A. Oh. Let's see.

11 Mr. Tomiyama, T-o-m-i-y-a-m-a. Tomiyama.

12 I don't know his -- I forget his first name.

13 Sorry, sir.

14 And next president was Obinata, O-b-n-a-t-a.

15 Mr. Obinata.

16 Q. O-b- --

17 A. Obinata.

18 Q. O-b-i-n-a-t-a?

19 A. O-b- -- O-b -- O like orange, B like
20 baseball, i-n-a-t-a.

21 Q. Okay. Thank you. And do you recall the
22 third president?

23 A. Kenji Katayagi. K-e-n-j-i.

24 Katayagi, K-a-t-a-y-a-g-i.

1 Q. Who was the president of the company when
2 you started working there?

3 A. What?

4 Q. Who was the president when you started
5 working at the company?

6 A. I forget. But not Tomiyama time.

7 Q. So when you started working at the company,
8 it was after Mr. Tomiyama was president and somebody
9 else was president, either Mr. Obinata or
10 Mr. Katayagi?

11 A. Yes, sir.

12 Q. What was the business of the company at that
13 time when you joined?

14 A. This company is manufacturing machines
15 and -- yes. Machines.

16 Q. What kind of machines?

17 A. We call automatic screw lathes.

18 Q. Automatic screw --

19 A. Lathes, l-a-t-h-e-s.

20 Q. So it was a machine for making screws out of
21 metal; is that right?

22 A. Yes, sir.

23 Q. Do you know Hank Marchionne?

24 A. Yes, sir.

1 small machine center used for -- to make parts for --
2 hard disk drive parts.

3 Q. Hard disk drive?

4 A. Yeah. Yes, sir.

5 Q. You don't have to call me "sir." We're
6 about the same age, you know.

7 A. Sorry. So you about thirty, so -- I like to
8 say, so -- this is Japanese culture, you know.

9 Q. Ah. Okay. It's not necessary.

10 When you were at Miyano Machinery U.S.A.,
11 did you go on sales calls?

12 A. Sometimes I visit customer's place.

13 Q. How often would you say that occurred?

14 A. Two times a year.

15 Q. What was the purpose of your visit?

16 A. Just say hello.

17 Q. Who was in charge of sales at M.M.U. over
18 the years?

19 A. Mr. Tsay Imad. Imad Tsay.

20 Q. Could you spell that?

21 A. I guess his first name is Imad -- I-m-d --
22 no. I-m-a-d. Imad. Tsay is T-s-a-y. Tsay.

23 Q. Is that a man?

24 A. Yes.

1 A. No.

2 Q. Does -- and so just so I understand this --
3 strike "does."

4 You are not an employee of MiyanoHitec
5 Machinery, correct?

6 A. Yes, sir.

7 Q. You are not a director?

8 A. Yes, sir.

9 Q. You are not an officer --

10 MR. BAKER: You have to answer out loud.

11 BY MR. MANZO:

12 Q. -- correct?

13 MR. BAKER: He was shaking his head no, but --

14 THE WITNESS: Sorry.

15 MR. BAKER: You have to say no.

16 THE WITNESS: I'm sorry.

17 BY THE WITNESS:

18 A. My -- today I'm -- had a, like -- kind of
19 like communication with the Indian people. India --
20 Japanese people -- Japanese people say like that,
21 yes, yes, yes. (Indicating)

22 But the Indian people say sometime like
23 that. (Indicating).

24 So, sorry, I have a mix-up to this, so

1 sorry. I'm sorry.

2 BY MR. MANZO:

3 Q. Okay. So it's correct that you are not an
4 officer or employee of MiyanoHitec Machinery -- yes?

5 A. I'm not officer and stockholder of
6 MiyanoHitec Machinery.

7 Q. Do you know whether MiyanoHitec Machinery
8 has any offices outside of Barrington, Illinois?

9 A. Your question is do MiyanoHitec had the
10 other person who is officer?

11 Q. Any office. office, business place.
12 Any other business place.

13 A. We are planning -- not we are.
14 Like his company is planning to set
15 warehouse.

16 Q. I did not understand; I'm sorry.
17 They are planning what?

18 A. Warehouse. Warehouse.

19 Q. I understand warehouse.

20 MR. BAKER: To set up a warehouse.

21 BY MR. MANZO:

22 Q. Where?

23 A. East Dundee.

24 Q. Is the company planning on having

1 Q. Okay. Is it true that Mitsui Sumitomo Bank
2 was the main lender to M.M.J.?

3 A. Yes, sir.

4 Q. Is it true that there were other banks that
5 also loaned money to M.M.J.?

6 A. Yes, sir.

7 Q. Maybe five, six, or seven of them?

8 A. Yes, sir.

9 Q. Is it true that at some point the outstand-
10 ing debt was the dollar equivalent of more than
11 \$130 million?

12 A. When?

13 Q. Any time.

14 MR. BAKER: Of whom?

15 MR. MANZO: Of M.M.J.

16 MR. BAKER: You didn't say that. That's why I
17 asked.

18 MR. MANZO: Oh. My apologies.

19 MR. BAKER: Sure.

20 MR. MANZO: Let me rephrase.

21 BY MR. MANZO:

22 Q. At any time that you remember while you were
23 working with M.M.J. --

24 A. Yes, sir.

1 Q. -- did its total indebtedness, total debt to
2 the banks, amount to more than \$130 million?

3 A. Yes, sir.

4 Q. Do you recall what the maximum amount of
5 indebtedness was, approximately?

6 A. Yes, sir.

7 Q. What was it?

8 A. Okay. Japanese yen -- Japanese yen and the
9 U.S. currency always the rate is fluctuate.

10 Q. You could say it in yen.

11 A. Yeah. So -- can I use paper?

12 Q. Oh. Yes.

13 A. Some paper. 27 billion Japanese yen.

14 Q. 27 --

15 A. 27 billion Japanese yen, maximum.

16 Q. Okay. Do you recollect approximately what
17 year that was?

18 A. 1992.

19 Q. Did you ever lend money to M.M.J.?

20 A. Lend money?

21 Q. You.

22 A. Yes.

23 Q. When was that?

24 A. I lend money -- it's just pocket money. For

1 example, going to trip, I lend money, cash, just like
2 two hundred dollars, three hundred dollars, lend the
3 money.

4 Q. Yes.

5 A. Sometimes long time.

6 Q. Okay. But nothing else?

7 A. No.

8 Q. Did you co-sign any of these bank debts of
9 M.M.J.?

10 A. Co-sign means like guaranty?

11 Q. Yes, like guaranty.

12 A. Yes, sir.

13 Q. So you were personally liable as a guarantor
14 on these debts of M.M.J.?

15 A. Yes, sir.

16 MR. BAKER: Object to the extent it calls for a
17 legal conclusion.

18 BY MR. MANZO:

19 Q. As a result of the I.R.C.J. transaction, is
20 it true that you -- that your liability on debts, as
21 a guarantor of M.M.J. debts, was extinguished?

22 A. What is "extinguish"?

23 Q. Terminated.

24 MR. BAKER: Object to the extent it calls for a

1 legal conclusion.

2 MR. MANZO: I'm just asking for his understanding
3 here at this point.

4 MR. BAKER: Same objection.

5 BY MR. MANZO:

6 Q. "Wiped out" is another way of thinking of
7 it.

8 MR. BAKER: Same objection.

9 Do you understand the question?

10 THE WITNESS: "Wiped out" is like nothing else?

11 BY MR. MANZO:

12 Q. After the -- okay. Strike the question.

13 After the I.R.C.J. transaction, were you --
14 did you believe you were personally liable any more
15 on the M.M.J. loans?

16 A. Yes, sir.

17 Q. You were? Even after I.R.C.J.?

18 A. After -- I.R.C.J. invade company, okay?

19 Then I.R.C.J. take over my company. And
20 this one, I give to -- my asset, include M.M.J.
21 stock, to I.R.C.J. And also I pay some money on this
22 paper, calculation to this.

23 And I.R.C.J. issue some paper, which is I
24 don't have any liability to M.M.J.

1 Q. And did you still have liability to the
2 banks?

3 A. No.

4 Q. Okay. So after the I.R.C.J., you did not
5 have any more liability as a guarantor to the banks
6 in Japan, right?

7 MR. BAKER: Same objections.

8 BY THE WITNESS:

9 A. I don't have a -- I believe that I don't
10 have any guaranty, or like a responsibility to lend
11 money to M.M.J. from -- or banks? No.

12 BY MR. MANZO:

13 Q. You said no responsibility to lend money.
14 I was talking about responsibility to repay
15 the banks.

16 A. No.

17 Q. That was gone?

18 A. Gone.

19 Q. Okay. Now, how did the I.R.C.J. become
20 involved with M.M.J.?

21 A. Japanese government knows our companies, my
22 ex-company, M.M.J. is one of the good company. And
23 we are number fourth largest turning center
24 manufacturer -- turning lathe manufacturer in Japan.

1 responsibility?

2 A. No.

3 Q. Did you know that other people in Miyano
4 Japan would have to share in the management
5 responsibility?

6 A. No.

7 Q. You did not know that Mr. Ito had to
8 surrender his whole retirement?

9 A. Mr. Ito surrender all retirement, yes.

10 And all director of Miyano Machinery Japan,
11 include me, surrender, everybody.

12 Q. How many employees were there of Miyano
13 Japan at that time, approximately?

14 A. Three hundred seventy peoples.

15 Q. And would you say almost all of them were in
16 Japan?

17 A. Yes, sir.

18 Q. You know what the Internet is, right?

19 A. Yes, sir.

20 Q. Okay. So you know -- have you ever visited
21 a web page of any company?

22 A. Yes.

23 Q. You use the Internet?

24 A. Yes.

1 (Deposition Exhibit No. 77 was marked
2 for identification.)

3 BY MR. MANZO:

4 Q. Mr. Miyano, Exhibit 77 is a collection of
5 papers having production Nos. MMU 0000096 through
6 -126. And these, for your information, concern
7 trademarks.

8 Exhibit 77 on the first page across the top
9 has three distinct regions.

10 A. Distinct?

11 Q. Yes. The left one says registration number,
12 and the middle one says Mark, m-a-r-k.

13 And on the right it says serial number.

14 A. Yes, sir.

15 Q. Under the registration number it's 1527809,
16 and the mark is for Miyano (stylized), and then they
17 have a serial number on the right.

18 And then down below in box No. 10, it
19 identifies the applicant and its post office. And,
20 as you can see, the applicant here is Miyano
21 Machinery U.S.A. Inc.

22 Now, is that the company that you were
23 president of, Miyano Machinery U.S.A. Inc.?

24 Or is that one of the companies you were

1 president of?

2 A. 1988 filing date.

3 Q. That's correct.

4 My only question is were you the president
5 of this company, Miyano Machinery U.S.A.?

6 A. Yes.

7 Q. Okay. And if you turn to the third page,
8 you see a copy of a registration. And it says
9 "Trademark Principal Register" and then, beneath
10 that, is the mark. Can you read the mark?

11 A. Yes.

12 Q. What's the mark?

13 A. Like a drawing "M," M-i-y-a-n-o.

14 Q. And then if we go down a few more pages to
15 the sheet that has the number 100 at the end,
16 production number, this is entitled "Application for
17 Registration Trademark on Principal Register
18 established by the Act of July 5, 1946." And it says
19 the trademark is for "MIYANO and design."

20 Do you see that?

21 Do you see it?

22 A. Yes.

23 Q. If you turn the page, there is one paragraph
24 above the signature, and the paragraph starts with

1 your name, I think; is that correct?

2 A. Yes, sir.

3 Q. And it has a signature under the words
4 "Miyano Machinery U.S.A. Inc.," and here is the
5 signature.

6 A. Yes, sir.

7 Q. And then below the signature are the words
8 "Toshiharu Miyano," comma, "President."

9 Do you see that?

10 A. Yes.

11 Q. And then there is a date, April 7, 1988,
12 right there?

13 A. Yes, sir.

14 Q. Were you the president on that date?

15 A. Yes, sir.

16 Q. Did you sign this document, this two-page
17 document?

18 A. I forget this document, but this sign is
19 mine.

20 Q. Okay. Let's turn down to page 107, which is
21 a letter from Masuda Funai addressed to the
22 Commissioner of Patents and Trademarks for the mark
23 "MIYANO," parentheses, stylized. Do you see that?

24 A. Yes.

1 Q. And on the next page, right there -- right
2 there on page MMU 0000108, the first words on the
3 page are your name; is that correct?

4 A. Yes, sir.

5 Q. And it again says you are the president.

6 A. Yes, sir.

7 Q. And then it again at the bottom has the name
8 of the corporation, Miyano Machinery U.S.A. Inc.; is
9 that right?

10 A. Yes, sir.

11 Q. And then is that your signature below that?

12 A. I think so.

13 Q. Okay. And it's dated August 3, 1988.

14 Were you the president on August 3, 1988?

15 A. Yes, sir.

16 Q. Okay. And then finally, turning down to
17 page 112, there is -- this document has a date stamp
18 of July 12, 1994, when it was received at the
19 Trademark Office mail room. And the title of the
20 document is "Combined Declaration Under Sections 8
21 and 15," and then there is some handwritten --
22 handwriting below that, where it says "Toshiharu,"
23 parentheses, "Tom," close parentheses, "Miyano," and
24 then there is some typed words, "declares that he is

1 the," and then back to handwriting again, "Chairman
2 of the Board," and then back to typing, "of Miyano
3 Machinery U.S.A. Inc.," et cetera.

4 That's -- that's identifying you, isn't it?

5 A. Yes. This me.

6 Q. Okay. And does your signature appear on the
7 next page of that document, page 113?

8 A. This my sign.

9 Q. Okay. And that's dated June 21, 1994,
10 right?

11 A. Yes.

12 Q. Thank you.

13 Do you remember whether you filled in the
14 blanks with these letters?

15 A. No.

16 Q. You don't remember?

17 A. This is not my -- my signing. This is not
18 my --

19 Q. Writing?

20 A. -- writing.

21 Q. Did you have a secretary when you worked as
22 chairman of the board of Miyano Machinery in June
23 1994?

24 A. Secretary? In U.S.A.?

1 Q. Yes.

2 A. No.

3 Q. You did not have one?

4 A. No.

5 (Deposition Exhibit No. 78 was marked
6 for identification.)

7 BY MR. MANZO:

8 Q. I hand you what has been marked as
9 Exhibit 78, and it has document production Nos. MMU
10 0000127 through -157.

11 And on the first page of this Exhibit 78, at
12 the very top under the word "Mark," it says "M Miyano
13 and design." Do you see that?

14 A. Yes, sir.

15 Q. And it refers to a registration No. 1217317,
16 registration date November 23, 1982, right?

17 A. Yes, sir.

18 Q. Okay. As of that date, you were associated
19 with Miyano Machinery U.S.A. Inc.; is that right?

20 A. 1982. 1982. I don't know.

21 Q. Okay. Well, let's look inside.

22 Do you remember a name of Goru Yamaguchi?

23 A. What page that?

24 Q. Page 131.

1 A. 131.

2 Q. 131.

3 A. Yes, I know him.

4 Q. And it says he is the executive
5 vice-president of the applicant corporation.

6 You remember him, then?

7 A. Yes, sir.

8 Q. Okay. And then if you turn to the page 133,
9 you see a picture of a trademark. Do you see that?

10 A. Yes, sir.

11 Q. That is -- that mark is what we call the
12 triangle winged "M" Miyano mark. And --

13 A. The block Miyano.

14 Q. Block Miyano. Okay.

15 If you turn to page 140 --

16 A. Yes, sir.

17 Q. -- there is the affidavits --

18 A. Yes, sir.

19 Q. -- under Sections 8 and 15. And the first
20 words under the title appears to be your name in
21 upper case letters, Toshiharu Miyano, declares and
22 states, et cetera.

23 Do you see that?

24 A. Oh, I see.

1 Q. Toshiharu Miyano --

2 A. Yes.

3 Q. -- declares and states.

4 A. Yes.

5 Q. And this is a declaration concerning power
6 lathes and bar feeders, it says right in the middle,
7 and -- do you see that?

8 A. Yes, sir.

9 Q. On the next page, 141, there are a couple of
10 signatures. Do you see the first signature?

11 A. Yes.

12 Q. Can you identify that?

13 A. This sign is -- I think so. I think my --
14 my -- myself.

15 Q. And what about this other person that's in
16 what we call a notarization?

17 A. Henry Marchionne.

18 Q. Do you know that person?

19 A. Yes, sir.

20 Q. And that has a date of April 7th, 1988.
21 Do you see that?

22 A. Yes, sir.

23 Q. Thank you. Now, he worked with you at
24 Miyano U.S.A.; isn't that right?

1 A. Yes, sir.

2 Q. What is the picture shown on page 142,
3 please?

4 A. This machine is (unintelligible) of fourth
5 model of Miyano M.M.J. manufactured --

6 (Reporter interruption.)

7 BY THE WITNESS:

8 A. Oh. This picture is five or six model --
9 new model from we start to manufacture CNC turning
10 lathes to the market.

11 old machine, very old machine.

12 BY MR. MANZO:

13 Q. This is the fifth or sixth model? Is that
14 what you said?

15 A. Yes.

16 Q. Okay. This is a machine that M.M.U. sold in
17 the United States?

18 A. I don't know. At that time M.M.A. is not
19 established yet. I don't know this machine, when it
20 ship, and M.M.A. establish by Masuda Funai attorney
21 office, so this date of -- M.M.A. established date
22 is -- they have document.

23 (Deposition Exhibit No. 79 was marked
24 for identification.)

1 BY MR. MANZO:

2 Q. Okay. The next exhibit is 79. And this has
3 document production Nos. MMU 0000077 through -095.

4 And at the first page it says it is for the
5 mark Miyano, and it is for registration 1529343.

6 Do you see that?

7 A. Yes, sir.

8 Q. Okay. And there's a picture on page 79 of
9 the registration. And right in the middle is the
10 name or the word "Miyano" -- do you see that,
11 "Miyano," as the mark?

12 A. Yes, sir.

13 Q. Okay. Now, the application begins on the
14 next page, 80, which is a transmittal letter from
15 Masuda Funai addressed to the Commissioner of Patents
16 and Trademarks. And it's an application for
17 registration of the trademark "Miyano."

18 A. Yes, sir.

19 Q. Okay. And then the application begins on
20 the next page, 81. And do you see the paragraph just
21 below the middle that says "MIYANO," upper case, "is
22 a Japanese family name and has no particular English
23 translation"?

24 Is that a true statement?

1 A. English translation -- like interpret means?

2 Q. It has no particular English meaning.

3 A. I heard some like Italiano having this
4 Miyano name also.

5 (Reporter interruption.)

6 BY THE WITNESS:

7 A. Italiano family --

8 MR. BAKER: Italian?

9 BY THE WITNESS:

10 A. Italian. Italiano family have same name, I
11 heard.

12 BY MR. MANZO:

13 Q. Okay. And on the next page, it begins with
14 your name, "Toshiharu Miyano states."

15 And that's you, isn't it?

16 A. Yes.

17 Q. And is this your signature on page 82?

18 A. Yes, sir.

19 Q. And dated April 7, 1988; is that right?

20 A. This date is date, but this April 7 is --
21 this is not my sign.

22 Q. I see. Okay.

23 And on page 84, can you tell us if you know
24 what -- what is shown there? It looks like five

1 copies of the same thing. What is this?

2 A. This sticker. Sticker.

3 Q. Sticker.

4 A. Sticker. Like peel-off sticker.

5 Q. A peel-off sticker?

6 A. Peel-off sticker to -- this is new Miyano

7 mark. This done by M.M.J.

8 Q. Okay.

9 A. This is even I made it.

10 Q. You made this.

11 A. I recom- -- I look me. I order to make it,
12 new one.

13 Q. Okay. And what was -- what did people do
14 with the stickers?

15 Where do the stickers go, in other words.

16 A. This sticker, put like envelope.

17 Q. Yes.

18 A. Yeah. And others. . . .

19 Q. Maybe machine?

20 A. Not machine, because this -- machine you use
21 oil. So this sticker is very easy to take out,
22 because oil is like -- what call? Like a --

23 Q. Lubricant?

24 A. Lubricant. And the sticker like easy out.

1 Q. Okay. Were you the president of M.M.U.
2 still on April or May -- sorry.

3 Were you the president of M.M.J. in April of
4 1988?

5 A. I think so.

6 Q. Okay. On page 90, this is a two-paragraph
7 document that starts with your name.

8 A. Yes, sir.

9 Q. And it says that you are the president of
10 the applicant corporation.

11 A. Yes, sir.

12 Q. And then the name of the corporation is
13 listed below as Miyano Machinery U.S.A. Inc., and
14 below that is a signature.

15 Is that your signature?

16 A. I guess so. I think so.

17 Q. You think so. Okay.

18 (Deposition Exhibit No. 80 was marked
19 for identification.)

20 BY MR. MANZO:

21 Q. Mr. Miyano, Exhibit 80 --

22 A. Yes, sir.

23 Q. -- is another document having production
24 Nos. MMU followed by six zeroes and the number 8

1 through No. -51.

2 And if you turn to page 11, you will see
3 that it concerns registration No. 1473925. And the
4 mark that it concerns is "Miyano the world leader in
5 precision."

6 Is that the mark we looked at earlier today,
7 white letters on the blue background, on Exhibit 71?

8 A. This mark is different. This is -- this is
9 block.

10 Q. Block.

11 A. Yeah. This is script.

12 Q. Oh. Same words, though.

13 A. Same words.

14 Q. Okay. Turning to page 26, you will see the
15 application for registration -- it says that at the
16 top -- for the trademark "Miyano the world leader in
17 precision."

18 And on the next page -- also on that same
19 page it says "Miyano is a family" -- I'm sorry -- "is
20 a Japanese family name and has no particular English
21 translation." Do you see that?

22 A. Yes, sir.

23 Q. And then the next page starts, again, with
24 your name, "Toshiharu Miyano states," et cetera,

1 "states that he is the president," and then below
2 that is the name machine Miyano Machinery U.S.A.
3 Inc., and there is a signature.

4 Is that your signature?

5 A. I think so.

6 Q. And below that are the words "Toshiharu
7 Miyano, President," dated March 11, 1987.

8 A. March 11, this is not my sign.

9 Q. I see. Okay.

10 That refers to the date, right?

11 A. What?

12 Q. The March 11 is the date only.

13 A. Date only.

14 Q. So you are saying it's your signature -- you
15 think it's your signature, but not your writing of
16 the date.

17 A. I think so.

18 Q. Okay. And then turning to page 44,
19 please -- well, before that, look at page 42, please.

20 Are these more stickers?

21 A. Yes, sir.

22 Q. And it says "Miyano The World Leader in
23 Precision," right?

24 "Miyano the world Leader in Precision," on

1 the sticker?

2 A. Yes, sir.

3 Q. Was Miyano company known for producing
4 machines that are very good in precision?

5 A. Which --

6 MR. BAKER: I'm sorry. Hang on one second.

7 You said Miyano company. I don't know what
8 you mean.

9 BY MR. MANZO:

10 Q. Yes. Was Miyano Machinery U.S.A. known for
11 selling machines of high precision?

12 A. I can tell you I'm engineer. So high
13 precision -- what area of high precision? This is a
14 one micron. This machine different, okay?

15 So this particular size, and chucking
16 machine, bar machine -- the precision are so
17 different.

18 So your question is like any kind of
19 precision. So tell me, what kind area of -- like
20 chucking machine, bar machine, or high precision?

21 Q. Yes. Well, if that question is not clear,
22 what did it mean for -- to say Miyano --

23 MR. BAKER: Go ahead.
24

1 BY MR. MANZO:

2 Q. -- is the world leader in precision?

3 MR. BAKER: Two things.

4 One, your questions continue to call for
5 speculation; and two, you are mischaracterizing the
6 witness' understanding of the question.

7 Go ahead.

8 BY THE WITNESS:

9 A. We are -- this Miyano -- like people say,
10 like a cookie, the world tastable cookie.

11 Nobody guarantee this cookie is world
12 tastable. But this like a -- like advertisement.

13 BY MR. MANZO:

14 Q. Ah.

15 A. This never guarantee worldwide precision
16 something. This cookie is the best -- best cookie in
17 the -- Chicagoland. This cookie is not like -- some
18 other people sell to -- these cookies -- you know, my
19 shop is more good cookie.

20 So I don't know your question so much well.

21 The precision is like kind of like sales
22 talk, which I believe. Without this kind of like
23 sales talk, how can tell to the customer?

24 Q. I see. Well, if you look at page 44, now,

1 this is a document called "Combined Declaration Under
2 Sections 8 and 15," and it begins after that with a
3 handwritten name in block letters, Toshiharu
4 Miyano -- that's you, right? Yes?

5 A. Yes.

6 Q. okay. -- "declares" --

7 A. But this is not my -- my truly sign. This
8 somebody write.

9 Q. Somebody else; okay.

10 And on the next page, there is a signature
11 underneath the words "Miyano Machinery U.S.A. Inc."

12 Is that your signature?

13 A. I think so, sir.

14 Q. Thank you. And it says title, president.

15 A. Yes.

16 Q. And --

17 A. But this -- this sign, president, and this
18 date of sign is different. Other people sign.

19 Q. okay. Have you had --

20 THE VIDEOGRAPHER: Excuse me, counsel. About
21 five minutes I'll need to change the tape.

22 MR. MANZO: All right. Since we have to change
23 the tape, why don't we take a five-minute recess.

24 MR. BAKER: Sure.

1 A. No. 2. At that time, year 2006, I was left
2 already Miyano Machinery U.S.A., M.M.U. And I worry
3 about the -- their serviceability -- serviceability.

4 So I said, I want help to this Miyano
5 Machinery U.S.A. if they agree.

6 Q. Okay.

7 A. No. 3, Takeo Kobayashi was -- before he was
8 design department -- chief of design department of
9 M.M.J. And if I -- M.M.U. employ me, I need Takeo
10 Kobayashi by my side, assistant.

11 No. 4, M.M.U. logo mark. Logo mark is like
12 a trademark, and block inside. And I offer to them,
13 please return to -- this mark to me because this mark
14 is basically registered in Japan by our family asset.

15 Q. I learned in Japan that the word in Japanese
16 for "mark" might be the same word as the plural,
17 "marks"; is that correct, as far as you understand
18 it?

19 A. Plural mark?

20 Q. Two marks.

21 A. Two marks.

22 Q. Three marks.

23 A. Two marks.

24 Q. Is the word the same in Japanese for one

1 mark, two marks, three marks?

2 A. No.

3 Q. No?

4 A. One mark, "M" with the -- flying mark is
5 created by my father.

6 Q. The triangle with the --

7 A. No.

8 Q. Oh, just the flying "M."

9 A. The flying "M" is created my father when he
10 was young. When my father dead, my mom get inheri-
11 tant asset from my father to my mom, Sumiko Miyano --

12 Q. Yes.

13 A. -- because this is family mark.

14 Then I joined the company from college to --
15 to M.M.J. I create this triangle mark with the --
16 "M" with the flying mark, flying wing.

17 Q. Right.

18 A. And the block Miyano. This one is not
19 created by myself. But I order to design department
20 to make this, and I agree this design and register by
21 my mom's name, Sumiko Miyano's name.

22 Q. And was this involved in topic No. 4?

23 A. Topic No. 4, yes.

24 Q. Did topic No. 4 concern just the triangle

1 "M" Miyano mark?

2 A. Triangle "M" mark is only register by M.M.U.

3 Q. In the United States.

4 A. In the United States.

5 Q. And what were you asking for?

6 A. Because I asked to them -- my mom -- at that
7 time my mom is pass away --

8 Q. Yes.

9 A. -- dead year 2002, December 26.

10 So all right over family mark, and this
11 mark, is -- my mom left will, and this will said
12 every -- all inheritant pass to me.

13 Q. Nothing to your sister?

14 A. Nothing to sister.

15 Q. Zero?

16 A. Because my mom left -- like attach document
17 how much she already passed asset.

18 Q. How much assets she already passed?

19 A. Passed, how much, millions money, millions
20 is dollar to her. So I never get any gift from my
21 mom before she dead.

22 Q. Really.

23 A. So -- so the -- my mom is -- left this will.

24 This will is -- was what called? Like a --

1 correctly, you were asking if they wanted to use your
2 patent?

3 A. Yes. I offer.

4 Q. Okay. And there's No. 8.

5 A. No. 8 is -- until now, M.M.J. never make any
6 bright new idea machine, even today. Okay?

7 So year let's say 2006, when I meet
8 Mr. Saitoh, I -- if they, M.M.J. or M.M.U., employ
9 me, and additional I give it to them my R & D idea,
10 what are going on the new feature of M.M.J., because
11 this is like my -- not money. Like I was -- I left
12 to M.M.J. -- M.M.U. So I was -- I was worry about
13 the future of M.M.J., M.M.U., the R & D.

14 But they don't -- they refuse my offer. I
15 don't know; until now they never -- maybe they have
16 some weapons, some new machines coming to the
17 I.M.T.S. Show Chicago.

18 Q. I don't know. So this letter at the bottom
19 of Exhibit 81 --

20 A. Yes, sir.

21 Q. -- before the Nos. 1 through 8 basically
22 says -- what? This is a letter from Saitoh-san --

23 A. To me.

24 Q. -- to you.

1 A. To me. And to Steven.

2 Q. To you and Steven.

3 A. Yes, sir.

4 Q. And it says what?

5 A. All our offer is refused.

6 Q. Decline the offer. Okay.

7 And then the response was at the top of the
8 Exhibit 81?

9 A. Yes. And the response is thank you very
10 much, their decision.

11 I believe that 80 percent of their --
12 90 percent of this past twenty years' M.M.J. new
13 machine is created by my idea.

14 Q. Ninety percent.

15 A. Ninety percent.

16 Q. Did they have any other engineers working
17 for the company?

18 A. Engineer is engineer. Creator is only one.

19 Q. So did they have more engineers?

20 A. Today?

21 Q. Okay. The last that you knew.

22 A. Year 2004, there was some engineer. But I
23 heard rumor; half of engineer left from M.M.J.

24 Q. Who did you hear that from?

PTO-102 (8-78)
U.S. Dept. of Commerce-Patent and Trademark Office

FPI-LOM

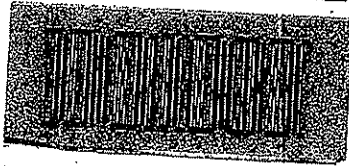
REG. NO.		MARK		SER. NO.	
1. REG. NO. 1527809		3. MARK MIYANO (STYLIZED)		4. SER. NO. 1527809 731125785	
2. REG. DATE MAR 07 1989				5. REGISTER PRINCIPAL	
6. INTERNATIONAL CLASS 7		7. PRIOR U.S. CLASS 23		8. FILING DATE 05/02/88	
				9. LAW OFFICE 580	
10. APPLICANT AND POST OFFICE MIYANO MACHINERY USA INC. 940 NORTH CENTRAL AVENUE WOOD DALE, ILLINOIS 60191 CORPORATION OF ILLINOIS				16. EXAMINING ATTORNEY GERARD ROGERS	
				17. TYPE OF MARK TRADEMARK	
				18. FIRST USE ICL: 007 10/01/1985	
11. CORRESPONDENCE ADDRESS NANCY E. SASAMOTO MASUDA FUNAI, EIFERT & MITCHELL LTD. 134 NORTH LASALLE STREET SUITE 1700 CHICAGO, IL 60602				19. IN COMMERCE ICL: 007 10/01/1985	
12. DOMESTIC REPRESENTATIVE				20. FOREIGN REG. AND APPL. DATA	
13. APPLICANT'S ATTORNEY NANCY E. SASAMOTO					
15. GOODS-SERVICES 007-MACHINES AND MACHINE TOOLS - NAMELY, TURNING CENTERS, LATHES, VERTICAL MACHINING CENTERS AND ALL PARTS THEREOF.					
21. OTHER DATA U.S. REGS. 1217316, 1217317, 1473925.					
22. AMENDED AFFIDAVIT RENEWAL					
PRINCIPAL REGISTER				25. Supervisory Examiner	
				26. Examiner	
23. Section 8 BA Harper				27. Passed for Publication GR/RE Borden	
Section 15 BA Harper				28. Passed for Registration	
Section 12 C				29. O.G. Date	
24. Passed for Renewal				PUBLISHED DEC 13 1988	
Renewed From					
<input type="checkbox"/> Less Goods					

DEPOSITION
EXHIBIT

77

4/23/08

MMU0000096



CONTENTS:

CLASS
7

Application papers.

01 JUL 1988

2. Letter & Rec. August 10, 1988

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3. Sec 8 & 15 7-12-84

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Int. Cl.: 7

Prior U.S. Cl.: 23

Reg. No. 1,527,809

United States Patent and Trademark Office

Registered Mar. 7, 1989

TRADEMARK
PRINCIPAL REGISTER

The logo for Miyano, featuring a stylized 'M' followed by the word 'iyano' in a bold, sans-serif font.

MIYANO MACHINERY USA INC. (ILLINOIS
CORPORATION)
940 NORTH CENTRAL AVENUE
WOOD DALE, IL 60191

FIRST USE 10-1-1985; IN COMMERCE
10-1-1985.

OWNER OF U.S. REG. NOS. 1,217,316, 1,473,925
AND OTHERS.

FOR: MACHINES AND MACHINE TOOLS -
NAMELY, TURNING CENTERS, LATHES,
VERTICAL MACHINING CENTERS AND ALL
PARTS THEREFOR, IN CLASS 7 (U.S. CL. 23).

SER. NO. 725,783, FILED 5-2-1988.

GERARD ROGERS, EXAMINING ATTORNEY

725783



MASARU FUNAI
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GERALD L. MOREL
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THOMAS MASUDA
(1905-1986)

SUBURBAN OFFICE
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ROLLING MEADOWS, IL 60008
TELEPHONE (312) 977-9500
TELECOPIER (312) 952-8825

April 27, 1988

Commissioner of Patents and Trademarks
Department of Commerce
Washington, D.C. 20231

Re: Application for Registration
Trademark: "MIYANO and design"
Int. Class No. 7
Applicant: Miyano Machinery USA Inc.

Dear Sirs:

Please find enclosed herewith the following:

Application for Registration for Trademark, "MIYANO and design",
in Int. Class No. 7, together with five specimens thereof, and
our check for the registration fee in the amount of \$200.00.

There is also enclosed a self-addressed stamped postcard to be
used as our receipt of the above. We would appreciate your
processing this application and look forward to a favorable
response in this matter.

Very truly yours,

MASUDA, FUNAI, EIFERT & MITCHELL, LTD.

Nancy E. Sasamoto

NES:lar:2704
Enclosures

MMU0000099



200.00-301

725783

APPLICATION FOR REGISTRATION OF TRADEMARK ON
PRINCIPAL REGISTER ESTABLISHED BY THE ACT OF JULY 5, 1946

Trademark: MIYANO and design

Int. Cl. No.: 7

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

F4^(a)
IL
FS_{IL}/Miyano Machinery USA Inc./
/940 North Central Avenue
Wood Dale, Illinois 60191/

Print

The above-identified applicant is an Illinois corporation and has adopted and is using the trademark shown in the accompanying drawing for

F3_{oot}

/Machines and machine tools - namely, turning centers, lathes, vertical machining centers and all parts therefor /

1/23 JB

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the act of July 5, 1946.

The trademark was first used on October 1, 1985; was first used in interstate commerce on October 1, 1985; and is now in use in such commerce.

The mark is used by applying it to product and cartons containing the product and five (5) specimens showing the mark as actually used are presented herewith.

~~Print~~

"MIYANO" is a Japanese family name and has no particular English translation.

F9

Print

The applicant is the owner of registration numbers:
1,217,316; 1,217,317 and 1,473,925.

F6_{IL}

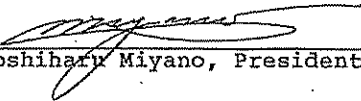
Applicant hereby appoints Masaru Funai, Helmut Eifert, Mary W. Shellenberg, Joseph S. Parisi and Nancy E. Sasamoto, members of the Bar of the State of Illinois practicing under the firm name of /Masuda, Funai, Eifert & Mitchell, Ltd., 134 North LaSalle Street, Suite 1700, Chicago, Illinois 60602/ either individually or collectively, its attorneys with full power of substitution and revocation, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.

Nancy E. Sasamoto, whose postal address is Suite 1700, 134 North LaSalle Street, Chicago, Illinois 60602, is hereby designated applicant's representative upon whom notices or processes in proceedings affecting the mark may be served.

Toshiharu Miyano states that he is the President of applicant corporation and is authorized to execute this affidavit on behalf of said corporation; he believes said corporation to be the owner of the trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in this application are true; and further, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

MIYANO MACHINERY USA, INC.

BY:


Toshiharu Miyano, President

DATED: April 7, 1988, 1988

df/3530



725783

Miyano Machinery USA, Inc.
940 North Central Avenue
Wood Dale, Illinois 60191

INT. CL.	7
PRIOR U.S. CL.	23

5709

First Use: October 1, 1985

First Use in Commerce: October 1, 1985

Goods: Machines and machine tools - namely, turning centers, lathes, vertical machining centers and all parts, therefor

Attorneys: Masuda, Funai, Eifert & Mitchell, Ltd.
134 North La Salle Street, Suite 1700
Chicago, Illinois 60602

Miyano

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1527309

"REGISTERED"

MAR 07 1989

PAT. & T.M. OFFICE

PUBLISHED
DEC 13 1988

255





U.S. DEPARTMENT OF COMMERCE - Patent and Trademark Office
IN REPLY REFER TO THE FOLLOWING AND THE FILING DATE:

SERIAL NO. 73/725783 MIYANO MACHINERY USA INC.

APPLICANT

Paper No.

MARK

ADDRESS:
Commissioner of
Patents and
Trademarks
Washington, DC
20231

MIYANO (STYLIZED)

ADDRESS

ACTION NO.

NANCY E. SASAMOTO
MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
134 NORTH LASALLE STREET
SUITE 1700
CHICAGO, IL 60602

01

MAILING DATE

07/01/88

The address of
all correspondence
not containing fee
payments should
include the word
"Box 5."

FORM PTO-1525 (2-84)

U.S. DEPT. OF COMM. PAT. & TM OFFICE

Also furnish: (1) Serial number of application, (2) The mark, (3) Examining Attorney's name and Law Office Number, (4) Mailing date of this action, and (5) Applicant's name (or applicant's attorney), telephone number and zip code.

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT.

SN 725783/627

The assigned Examining Attorney has reviewed the referenced application and determined the following.

The Examining Attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d) (1986). TMEP section 1105.01. An informality in the application nonetheless precludes further action at this point.

The affidavit signed by Toshiharu Miyano is not notarized. Though it does contain some language that would satisfy the declaration requirements of 37 C.F.R. Section 2.20, it does not contain all the statements required of declarations submitted in lieu of notarized affidavits. A comparison of the original affidavit form with the attached model declaration should illustrate the deficiencies.

The attached declaration may be executed to remedy the application's informality. Once executed it may be inserted in the file; a new application need not be executed.

MMU0000104


SN 725783/627

-2-

In all correspondence to the Patent and Trademark Office, the Applicant should list the name and law office of the Examining Attorney, the serial number of this application, and the mailing date of this Office action.

The Examining Attorney will decide on the merits of the application when the Applicant responds. 37 C.F.R. Section 2.61(b); TMEP section 1105.01.

MA
GR:aim


Gerard Rogers
Trademark Attorney
Law Office 8
703 557-5242

MMU0000105

(Name of Officer of Corporation)

being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that the undersigned is

(Official Title)

of Applicant corporation and is authorized to execute this instrument on behalf of said corporation; he/she believes said corporation to be the owner of the mark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

(Name of Corporation)

By _____

(Signature of Officer of Corporation, and
Official Title of Officer)

(Date)



TM

MASUDA, FUNAI, EIFERT & MITCHELL, LTD.

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SUBURBAN OFFICE
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TELEPHONE (312) 977-9500
TELECOPIER (312) 952-8825

August 8, 1988

The Commissioner of Patents and Trademarks
Washington, D.C. 20231
Box 5

Attention: Law Office Eight,
Trademark Attorney Jerard Rogers

Re: 73/725783 ✓
Mark: "MIYANO" (STYLIZED) ✓
Applicant: Miyano Machinery USA Inc. ✓
Mailing Date of Office Action: 07/01/88

Dear Mr. Rogers:

In response to your Office Action Number One, dated July 1, 1988 (a copy of which is attached), I am enclosing the executed declaration of Toshiharu Miyano, President of the applicant company. I understand that this executed declaration will be inserted in the file.

With the inclusion of the attached declaration, it is believed that this application is in condition for publication. Favorable action is therefore requested. Please feel free to contact me if you have any questions or require further information.

Very truly yours,

MASUDA, FUNAI, EIFERT & MITCHELL, LTD.

Nancy E. Sasamoto ✓
Nancy E. Sasamoto

NES:df 3508
Enclosure

cc: Miyano Machinery USA Inc.

MMU0000107

Toshiharu Miyano

(Name of Officer of Corporation)

being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that the undersigned is

President

(Official Title)

of Applicant corporation and is authorized to execute this instrument on behalf of said corporation; he/she believes said corporation to be the owner of the mark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Miyano Machinery USA Inc.

(Name of Corporation)

By 

President

(Signature of Officer of Corporation, and
Official Title of Officer)

August 3, 1988

(Date)



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
73/725,783

2. Mark:
MIYANO
(Stylized)

3. Applicant:
MIYANO MACHINERY USA INC.

4. Publication Date:
DEC. 13, 1988

The mark of the application above identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13 of the Statute or by rules 2.101 and 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$9.50 each for domestic orders, or at \$11.88 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

By direction of the Commissioner.



MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
ATTORNEYS AT LAW

ONE EAST WACKER DRIVE SUITE 3200
CHICAGO, ILLINOIS 60601-2002
TELEPHONE (312) 245-7500
TELECOPIER (312) 245-7467

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ROLLING MEADOWS, IL 60008-4241
TELEPHONE (708) 734-8811
TELECOPIER (708) 734-1089

WILLIAM P. ANDREWS
DENISE L. BERDELLE
NATE FATA
KATHLEEN M. GABER
HITOSHI HASEGAWA
DANIEL N. JANICH
ELDON H. KAKUDA
BRADLEY D. KAPLAN
STEVEN L. KATZ
AMY L. KURLAND
REBECCA B. LEDERHOUSE
KENDALL BLAKE LYNCH
CAROL HIROMI MORITA
LAURIE A. PEARD
SUSAN M. RENTSCHLER
RIKA SAEKI
JOHN F. SCANLAN
JOHN B. STANIS

JAMES M. COHEN
HELMUT EIFERT
JERROLD E. FINK
BRYAN Y. FUNAI
MASARU FUNAI
KEITH WALTER GROEBE
COLIN HARA
DAYNE KONO
THOMAS P. MC MENAMIN
GERALD L. MOREL
JOSEPH S. PARISI
STEPHEN M. PROCTOR
GARY D. SANTELLA
NANCY E. SASAMOND
MARY W. SHLENGER
EDWARD J. UNDERHILL

THOMAS MASUDA
(1905-1986)

July 12, 1994

PLEASE RESPOND TO:

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

VIA EXPRESS MAIL

Attn: Post Registration Division

Re: Combined Declaration Under Sections 8 and 15 for MIYANO and Design®
Owner: Miyano Machinery USA Inc.
Registration No.: 1,527,809
Registration Date: March 7, 1989
Int'l Class No.: 7

Dear Sir or Madam:

Please find enclosed herewith a Combined Declaration Under Section 8 and 15 on behalf of Miyano Machinery USA Inc. indicating that MIYANO and Design® has been in continuous use in interstate commerce for five consecutive years from the date of the registration to the present on the goods recited in the registration. Also enclosed is a check in the amount of \$200.00 as payment of the filing fee and specimens of the mark as used. Please place this Declaration on record and commence your review procedure.

Also, please return the enclosed card acknowledging receipt of this Declaration.

Very truly yours,

MASUDA, FUNAI, EIFERT & MITCHELL, LTD.

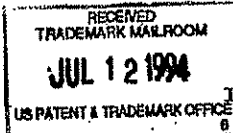
Amy L. Kurland

Enclosures

cc: Joseph S. Parisi, Esq.

ALX:ban
2260\20060002.ak3

MMU0000110



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Section 8 and 15
Declaration for
MIYANO MACHINERY USA INC.

Registration No.: 1,527,809
Date: March 7, 1989
Mark: MIYANO and Design

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
Attn: Post Registration Division

"Express Mail" mailing label number: NB 400 328 236

Date of Deposit: July 12, 1994

I hereby certify that the attached Combined Declaration under Sections 8 and 15, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, Attn: Post Registration Division.

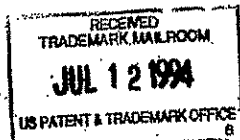
Respectfully submitted,



Amy L. Kurland

ALK:ban
2260\misc\20060002.ak3

MMU0000111



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
POST REGISTRATION SECTION

International Class No.: 7

Owner: Miyano Machinery USA Inc.
Trademark: Miyano and Design
Registration No.: 1,527,809
Registration Date: March 7, 1989

COMBINED DECLARATION UNDER SECTIONS 8 AND 15

TOSHIHARU (TOM) MIYANO declares that he is the CHAIRMAN
OF THE BOARD of Miyano Machinery USA Inc. an Illinois
corporation, having its principal place of business at 940 North
Central Avenue, Wood Dale, Illinois 60191, and is authorized to
execute this Declaration on behalf of said corporation; that Miyano
Machinery USA Inc. owns the above-identified registration issued
on March 7, 1989, as shown by records in the Patent and Trademark
Office; that the mark shown herein has been in continuous use in
interstate commerce for five consecutive years from the date of the
registration to the present on all of the goods specified in the
Certificate of Registration:

Machines and machine tools - namely, turning centers, lathes,
vertical machining centers and all parts therefor

that such mark is still in use in commerce as evidenced by the
specimens included herewith showing the mark as currently used on
the goods and on point of purchase displays; and there has been no
final decision adverse to the Registrant's claim of ownership of
such mark for such goods, or to the Registrant's right to register
the same or to keep the same on the Principal Register, and that
there are no proceedings involving said rights pending and not

150 KK 07/27/94 1527809

0 374 200.00 CK

MMU0000112

disposed of either in the Patent and Trademark Office or in the courts.

I declare further that all statements made herein are true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document and the registration to which it relates.

Registrant hereby appoints Amy L. Kurland, Nancy E. Sasamoto and Joseph S. Parisi, all members of the Bar of the State of Illinois and practicing under the firm name of Masuda, Funai, Rifert & Mitchell, Ltd., One East Wacker Drive, Suite 3200, Chicago, Illinois 60601-1802, either individually or collectively, attorneys for said registrant with full power of substitution and revocation to file this declaration and to transact all business in the Patent and Trademark Office in connection therewith.

MIYANO MACHINERY USA INC.

BY: 

TITLE: CHAIRMAN OF THE BOARD

Print or Type Name and Title:

TOSHIKAZU (TOM) MIYANO, CHAIRMAN OF THE BOARD

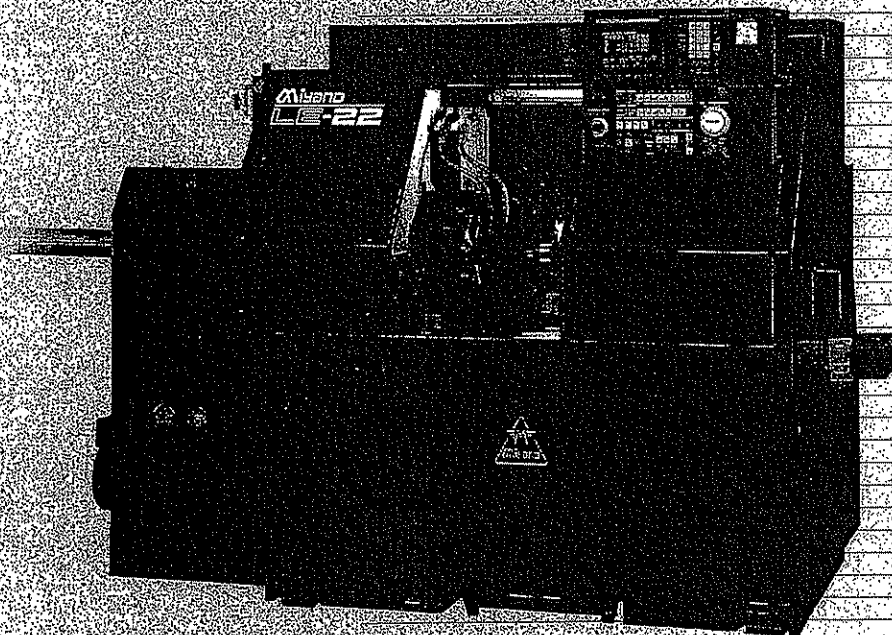
Dated: JUNE 21, 1994

Miyano

2-AXIS CNC TURNING CENTER

LE-12

LE-22



The machine color is the USA standard.

MIYANO'S 2 AXIS CNC TURNING CENTER PROVIDES THE MOST EFFICIENT MACHINING.

■ MAIN FEATURES

- High speed traverse rate of the main turret (Z-Axis: 630IPM) provides shorter cycle time.
- High response VAC motor enables efficient and powerful cutting.
- The turret features bi-directional fast indexing of 0.4 sec. (LE-22) with a powerful clamping force to ensure highly accurate heavy machining.
- Tool setting can be performed quickly with Miyano's "SPEED SETTER" sensor(option).
- Coolant tank is separate from the main body to cut the effect of thermal distortion for high accuracy machining.
- The 10 station turret can be equipped with up to 5 revolving tools. Spindle positioning(option) or C-axis spindle control(option) allows various types of combined machining.
- Self cleaning slant bed structure for easy chip disposal.
- 32 bit CPU in the control unit for faster processing.



MMU0000114

MACHINE SPECIFICATION

Bar Capacity/mm		1-3/8" (35mm)	2" (51mm)
		6-1/2" (165mm)	8" (210mm)
		10" (255mm)	11-3/4" (300mm)
		6" (165mm)	8" (210mm)
		A2-5	A2-6
		1-3/8" (35mm)	2" (51mm)
		30 to 5,000rpm	25 to 4,000rpm
		VAC 20HP (15.0kW)	VAC 25HP (18.5kW)
		5 degree	5 degree
Collet Chuck		S-16 P-Type Collet S-16 S-Type Collet DIN 171E CRAWFORD W-850	S-22 P-Type Collet S-22 S-Type Collet DIN 177E CRAWFORD V-120
Tooling Station		10	10
Cutting Tool Shank Size		3/4" (20mm)	1" (25mm)
Tool Hole Dia.		1-3/4" (40mm)	1-3/4" (40mm)
Slide Stroke	X-Axis	5-7/8" (150mm)	6-1/2" (165mm)
	Z-Axis	11-3/4" (300mm)	13-3/4" (350mm)
Rapid Traverse Rate	X-Axis	472" (12m)/min.	551" (14m)/min.
	Z-Axis	630" (16m)/min.	630" (16m)/min.
Turret Indexing Time		0.5sec.	0.4sec.
Max. Slide Stroke		11-3/4" (300mm)	11-3/4" (300mm)
Max. Slide Force		560kgf	560kgf
Sleeve Size		MT-4	MT-4
Machine Height		66" (1,670mm)	66" (1,670mm)
Floor Size without Bar Guide		74"X58" (1,890X1,480mm)	84"X58" (2,135X1,480mm)
Machine Weight		7,270lbs (3,300kg)	7,930lbs (3,600kg)
Barfeeding System, Parts Catcher, Parts Conveyor, Chip Conveyor, Chip Cart, Work Ejector, Revolving Tools, C-Axis Control, Spindle Orientation, Spindle Positioning, High Pressure Coolant, Spindle Air Blow, Auto Door, Tail Stock, NC Processor			

Note: The specifications are subject to change without notice.
Machine in photo may not be exactly same as actual products.

9040TC

SPECIFICATIONS (FANUC OT)

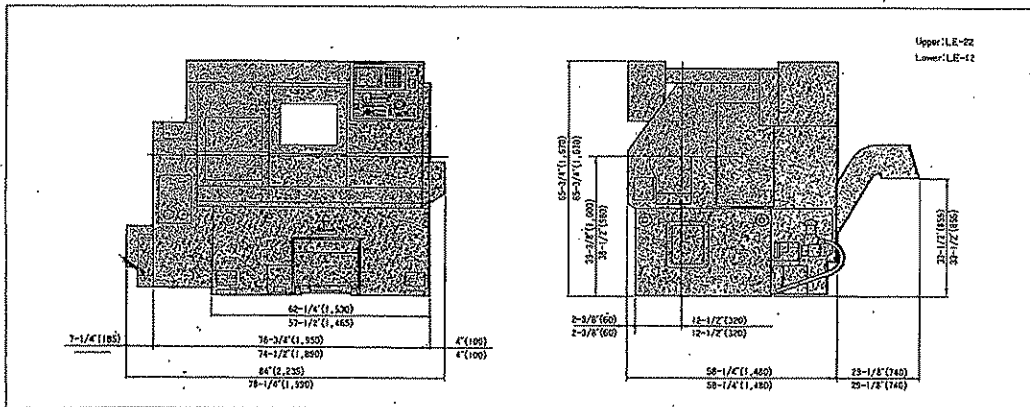
2-Axis, X and Z axis are controlled simultaneously
Interpolation Unit: 0.001mm
0.001mm
8,000 Character (65ft/20m)
By RS-232C Interface
4,800 bit/sec. (with NC Processor)
G01: Linear, G02/G03: Circular
Low Speed, 25%, 50%, 100%
0 to 150% by 10% steps
G32, G92
Constant cutting speed control.
Direct speed setting with S4 digits
50% to 120% by 10% steps
By work coordinate system setting
T4 digit command, first two digits;
Selection of tool number and work coordinate number 1 to 32, Last two digits; tool position offset
By measuring cut or gauging dimension
One cycle bar work running, Continuous bar work running, Single block running, Block delete, Machine lock, Dry run, Feed hold,
32 bit CPU, Monochrome CRT, Decimal Input, Manual Pulse Generator, Memory Protect, Start Infeed, Program No. Search, Canned Cycle (G99, G82, G94), Multiple Repetitive Canned Cycle (G70 to G75), Self Diagnostic, Stored Stroke Limit, Circular Interpolation by Radius Designation, Digital Servo System, Chamfering/Corner R, Tool Nose R Compensation

LE9040TC

NC OPTION

Additional Program Memory, Direct Drawing Dimension Program

EXTERNAL VIEW



MIYANO MACHINERY JAPAN INC.

3-1, Shimorenjuku 7-chome, Mitaka-shi Tokyo 181, Japan
Phone: (0422-45-1121) Telex: 0222333 MIYATO J Facsimile: (0422-44-6669)

MIYANO MACHINERY USA INC.

Head Office, Production Division:
940 North Central Avenue, Wood Dale, Illinois 60191 U.S.A.
Phone: (708) 765-4141 Telex: 910-256-0480 Facsimile: (708) 880-7286

Westcoast Branch:
2824 North San Fernando Blvd., Burbank, California 91504 U.S.A.
Phone: (818) 848-6889 Facsimile: (818) 842-2052

MIYANO MACHINERY EUROPE GMBH.

Feldhaider Strasse 62, 4000 Erkrath 2, West Germany
Phone: (02104-51057) Telex: 0550270 MIYNA D Facsimile: (02104-35239)

MIYANO MACHINERY ASIA CO. LTD.

4/F, Sun Plaza, 28 Canton Road, Kowloon, Hong Kong
Phone: 391-7273 Facsimile: 391-7336

PRINTED IN JAPAN US-2E-9008330A

MMU0000115



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

REGISTRATION NO. 1527809

SERIAL NO. 73/725783

PAPER NO.

MAILING DATE: 02/13/95

MARK: MIYANO (STYLIZED)

REGISTRANT: MIYANO MACHINERY USA INC.

CORRESPONDENCE ADDRESS:

AMY L. KURLAND
MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
ONE EAST WACKER DRIVE, SUITE 3200
CHICAGO, IL 60601-2002

Please furnish the following
in all correspondence:

1. Your phone number and zip code.
2. Mailing date of this action.
3. Affidavit-Renewal Examiner's name.
4. The address of all correspondence
not containing fees should include
the words "Box 5".
5. Registration No.

RECEIPT IS ACKNOWLEDGED OF THE SUBMITTED REQUEST UNDER:

SECTION 8 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.161-2.166.

SECTION 15 OF THE TRADEMARK STATUTE AND 37 CFR SECS. 2.167-2.168.

YOUR REQUEST FULFILLS THE STATUTORY REQUIREMENTS AND HAS BEEN ACCEPTED.

BARBARA HARPER
AFFIDAVIT-RENEWAL EXAMINER
TRADEMARK EXAMINING OPERATION
(703) 308-9500 EXT. 41

MMU0000116

eTeas Change of Correspondence

73725783

<SERIAL NUMBER>
<MARK>
<LAW OFFICE ASSIGNED>
<CONTACT TYPE>

73725783
<http://tess2.uspto.gov/webaka/images/73725783.gif>
TMEO Law Office # 8
Correspondent

<ORIGINAL ADDRESS>

AMY L. KURLAND
MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
ONE EAST WACKER DRIVE, SUITE 3200
CHICAGO, IL 60601-2002
US

<NEW ADDRESS>

<CORRESPONDENT>
<ORGANIZATION>
<INTERNAL ADDRESS>
<STREET ADDRESS>
<CTRY>
<STATE>
<POSTAL CODE>
<PHONE>
<FAX>
<EMAIL>
<EMAIL AUTHORIZED>
<SUBMIT DATE>

George H. Kobayashi
Masuda, Funai, Eifert & Mitchell, Ltd.
Suite 2500
203 North LaSalle Street
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60601-1262
312-245-7500
312-245-7467
gkobayashi@masudafunai.com
Y
Nov 4, 2003

<BOILERPLATE>

<EMAIL>

The USPTO is authorized to communicate with the applicant at the listed email address.

<SIGNATURE>

<SIGNATURE-NAME>
<SIGNATORY-DATE>
<SIGNATORY-NAME>
<SIGNATORY-POSITION>

/George H. Kobayashi/
20031104
George H. Kobayashi
Attorney at Law

73725783

MMU0000117

TRADEMARK APPLICATION SERIAL NO. 725783

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

040 05/13/88 725783

1 301

200.00 EK

PTO-1555
(5/87)

MMU0000118

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***** USER ID IS ex866386 *****
# OF MARKS # DISPLAYED SEARCH
SS1:      5      5 PHRASCH MIYANO
SS2:      3090    1 SYLSCH MIYANO
SS3:      101    2 PHRASCH 2&007/1C~DEAD/LD
HELLO FROM SDC/ORBIT IV, 106/22/98 2:15 P.M. EASTERN TIME!
YOU ARE NOW CONNECTED TO THE ACTIVE TRADEMARK DATABASE.
TIMEPROMPTING IS NOW IN EFFECT.
SEARCH AUDITING IS NO LONGER IN EFFECT.
```

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***** USER ID IS e2868898 *****
# OF MARKS # DISPLAYED SEARCH
00000001: 1 1 PHRASCH /OW GRAFOTEC KOTTERER
00000002: 1 1 PHRASCH /OW GRAFOTEC KOTTERER
00000003: 1 1 PHRASCH /OW MORBIOELLI
00000004: 12 3 PHRASCH /OW MASCHINENFABRIK RIETER
00000005: 4 4 PHRASCH /OW REFLANGE
00000006: 6 6 PHRASCH /OW MIYANO MACHINERY
00000007: 1 1 PHRASCH /OW ROTABRUSH
00000008: 1 1 PHRASCH /OW THERMASSAGE
00000009: 6 6 PHRASCH /OW DURKOPPWERKE
00000010:

TERMINAL SESSION FINISHED 05/21/88 4:28 P.M. (EASTERN TIME)
ELAPSED TIME ON ACTIVE: 0.42 HRS.
ELAPSED TIME THIS TERMINAL SESSION: 0.42 HOURS.
PLEASE HANG UP YOUR TELEPHONE NOW. GOOD-BYE!

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MMU0000120

PAGE: 4

SERIAL NUMBER CAM0321: 73/725783 (CONTINUED)

[illegible]

CITY IPY0047: WOOD DALE

STATE/COUNTRY (PY0121) ULLNOTS

ZIP CODE 1740701: 40191

TRANSACTION COMPLETE

PR

TRADEMARK ACTION REPORT PROCESS DATE: 10/14/08 PAGE: 3

SERIAL NUMBER CAM0321: 73/725733 (CONTINUED)

FOREIGN APPL. NUMBER (FN0071: NNNNNNNNNNNN

FOREIGN APPL. FILING DATE (FN0011: NNNN/NN/NN

FOREIGN REG NUMBER (FN0091: NNNNNNNNNNNN

FOREIGN REGISTRATION DATE (FN0021: NNNN/NN/NN

FOREIGN REG. EXPIRATION (FN0031: NNNN/NN/NN

FOREIGN RENEWAL REG NUMBER (FN0101: NNNNNNNNNNNN

FOREIGN REG. RENEWED (FN0041: NNNN/NN/NN

FOREIGN REG. RENEWED EXP (FN0051: NNNN/NN/NN

PRIORITY CLAIMED: NO

PRIOR U.S. REGISTRATION (PRO021: 1217316

PRIOR U.S. REGISTRATION (PRO021: 1217317

PRIOR U.S. REGISTRATION (PRO021: 1473725

AND OTHERS CAM041

ASSIGN. NAME CHANGE (NC99991:

APPLICANT (PY0171: ORIGINAL APPLICANT - FIRST NAME

ENTRY NUMBER (PY0041: 01

NAME (PY0141: MIYANO MACHINERY USA INC.

ENTITY TYPE (PY0051: CORPORATION

CITIZENSHIP (PY0031: ILLINOIS

COMPOSED OF (C0XXXX1:

ENTITY STATEMENT (ENXXXX1:

DBA/AKA STATEMENT (DSXXXX1:

MMU0000122

TRADEMARK ACTION REPORT PROCESS DATE: 09/26/88 PAGE: 2

SERIAL NUMBER [AM032]: 73/725783 (CONTINUED)

USE IN ANOTHER FORM [AF***2]:

GOODS AND SERVICES [GS****]: MACHINES AND MACHINE TOOLS - NAMELY, TURNING CENTERS, LATHES, VERTICAL MACHINING CENTERS AND ALL PARTS THEREFOR

CERTIFICATION STMT [CS0000]:

ATTORNEY [AT0000]: NANCY E. SASAMOTO

CORR. NAME/ADDRESS [AM001]: NANCY E. SASAMOTO
[AM002]: MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
[AM003]: 134 NORTH LASALLE STREET
[AM004]: SUITE 1700
[AM005]: CHICAGO, IL 60602

DOMESTIC REP [DR0000]:

ONCURRENT USE STMT [CU****]:

DESCRIPTION OF MARK [DM0000]:

DISCLAIMER /PREDETERMINED TEXT [D10000]:

INTERFERENCE STATEMENT [IN0000]:

INING AND STIPPLING STATEMENT [LS0000]:

NAME/PORTRAIT DESC. / CONSENT [N00000]:

ORDER REST. SCOPE/CLAIM OF REG [OR****]:

SECTION 2(F) [AM078]: NO

SECTION 2(F) IN PART [AM079]: NO

SECTION 2(F) LIMITATION STMT. [TF0000]:

TRANSLATION OF WORDS IN MARK [TR0000]:

FOREIGN ENTRY NUMBER [FN006]: NNN

FOREIGN COUNTRY OF ORIGIN [FN008]: NO FRGN CNTY CODE

MMU0000123

RADEMARK ACTION REPORT PROCESS DATE: 09/26/88 PAGE: 1

SERIAL NUMBER [AM032]: 73/725783 FILING DATE [AM016]: 1988/05/02

EXAMINING ATTORNEY [AM025]: ROGERS, GERARD

AM OFFICE [AM024]: 8

STATUS: ALLOWED

SRK [AM028]: MIYANO

SRK DRAWING CODE [AM029]: ~~5000~~ 5T09 ←

SRK TYPE:
Trademark [AM058]

PO DESIGN CODE [WP003]:

GISTER: Principal [AM086]

ENDED/REGISTER: NNNNNN

TE REGISTER AMND [AM014]: NNNN/NN/NN

IME CLASSIFICATION [CL010]: 007

ISS STATUS: ACTIVE

ISS STATUS DATE: 1988/05/27

EL CLASS(ES) [CL003]: 007

CLASS(ES) [CL005]: 023

E OF FIRST USE [CL007]: 1985/10/01

E OF FIRST USE IN COMM [CL008]: 1985/10/01

IN ANOTHER FORM [AF***0]:

IN ANOTHER FORM [AF***1]:

MMU0000124

POST REGISTRATION REVIEW WORKSHEET

Name:		Date: 1-2-15		Reg. No: 1527809	
I certify all information in the database matched the information in the file and no corrections were required.					
INSTRUCTIONS: If the information in the database does not match the information in the file, the reviewer should check the ERROR column. After correction (text editing), the EDITED column should be checked. RETAIN IN FILE					
Screen	Error	Edit	Error found during review requiring amendment of:		
MK			AM	Mark Word	Drawing Code
			AM	Mark Type:	New Drawing: Yes No
			AM	Register:	
			AM	Amended Register:	Date Register Amended:
CL			CL	Prime Classification:	
			CL	Class Status	Active Inactive Class Status Date:
			CL	International Class: Add	Delete Reclassify
			CL	U.S. Class: Add	Delete Reclassify
			GS	Goods and Services:	
CD			DL	Deleted Goods ()	Less Goods (())
			AT	Attorney Name:	
			CD	Correspondence: Name	St. Address City/St/Cntry Zip
AC			DR	Domestic Representative:	
			AO	Amended/Registration Statement:	
PY			BO	Certification of Correction Statement:	
			PY30	Registrant:	Name
			PY		Entity Type
			PY		Citizenship/State of Inc.
			PY	Address	Inter City State/Co Zip
			EN	Entity Statement:	
			CO	Composed of Statement:	
			DB	Doing Business As (DBA) or (AKA) or (TA) Statement	
			NC30		
			PY	Registrant	Name
			PY		Entity Type
			PY		Citizenship/State of Inc.
			PY	Address	Inter City State/Co Zip
			EN		
			CO		
		DB			
		NC			
		99			
THER:					
EMARK:					
I certify that all corrections have been entered in accordance with the above instructions and text editing guidelines.					

MMU0000125

